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Critical Examination of the Credibility of Dying Declarations: Judicial Scrutiny and Evidentiary Admissibility

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Anchored in the legal maxim, "Nemo Moriturus Praesumitur Mentire", the concept of dying declaration posits that an individual on the verge of death, or under an unfeigned belief of impending demise, wouldn't fabricate their statement. A widely contested exception to the hearsay principle[1], the dying declaration principle has largely evolved through judicial interpretation and pronouncements in the Indian legal framework. The Bhartiya Sakshya Adhiniyam, 2023 (hereby referred to as the BSA) is the replacement to The Indian Evidence Act, 1872, and has done little to no amendments to former Section 32 of the Indian Evidence Act, now Section 26(a) of the BSA, proving to be a rushed attempt to exterminate the colonial code. The paper seeks to shed light on the rationale of the admissibility of a dying declaration as an uncontested substantive piece of evidence. The paper, in its finality, through relevant provisions and Law Commission Reports, provides some implicit flaws in the current legislation, and seeks to provide a reformative solution for the same.

Keywords: *dying declaration, substantive evidence, bsa, evidence.*

[1] Michelle A. Bernstein, 'Evidence - A Modern Application of Dying-Declaration Exception to Hearsay Rule' (1997) 30 Suffolk University Law Review 575

INTRODUCTION

'A person on the verge of death is unlikely to fabricate a statement, given the solemnity and gravity of their situation,' as observed in a recent Supreme Court ruling in the case of Irfan v State of Uttar Pradesh[2]. The given judgement emphasises the philosophical approach that is fostered by the legal maxim governing dying declarations, which goes, "nemo moritusus prasumitus mennre", providing a profound moral justification that no one is presupposed to lie on their deathbed. The judgement holds a stark contrast from its judicial precedent set in a 1953 case, namely Ram Nath Madhao Prasad v State of MP[3]. The judgement tends to minimise the evidentiary value of a dying declaration and states that the victim is susceptible to physical and mental vulnerability whilst making the statement, and thus it can't be admissible on its face value, without further corroboration. The same was upheld by the Supreme Court in the case of Khushal Rao v State of Bombay (1958).[4]

According to Section 26(a) of the Bharatiya Sakshya Adhiniyam, 2023[5], a dying declaration is a statement made by an individual as to the cause of his death, or the surrounding circumstances which led to their death, and is only admissible when the person who made such a statement dies[6], and doesn't merely believe that there is a likeliness of death. It carries credibility and weight due to the reason that it comes from the mouth of the dying person.[7]

The origins of the concept of dying declaration can be traced back to R. v Woodcock[8] judgement, where Justice Eyere highlighted that such statements made by persons with no impending hope of survival can't be neglected with an underlying motive of falsehood, when the person's mind is influenced, in spiritual considerations, to speak the truth.[9] Further, in the American

[2] *Irfan v State of Uttar Pradesh* (2023) SCC Online SC 1060
[3] *Ram Nath Madhoprasad & Ors v State of Madhya Pradesh* AIR 1953 SC 420
[4] *Khushal Rao v State of Bombay* (1958) SCR 552
[5] Bharatiya Sakshya Adhiniyam 2023, s 26(a)
[6] *Bakshish Singh v State of Punjab* AIR 1957 SC 904
[7] *Muralidhar v State of Karnataka* (2014) 5 SCC 730
[8] *R. v Woodcock* [1789] 1 Leach 500
[9] Sujan Agrawal, 'Dying declaration and the medical practitioner: A review' (2021) 20(9) IOSR Journal of Dental and Medical Sciences

judgements of State v Moody[10] and Mattox v the United States[11], the courts opined that even though the statement may not be made under oath in front of a judicial magistrate, the sanctity and solemnity of the circumstances make the dying declaration a succinct security of truthfulness.

The dying declaration, as understood from the letter of the text in Section 26(a) of BSA 2023, can be recorded by any person, preferably a judicial magistrate (the practicality of which shall be disputed in a later section of the paper). The person recording the dying declaration must have some circumstantial or factual proximity and nexus with the victim[12].

The applicability, significance, and bearing of Section 32 of the Indian Evidence Act 1872 were put under light in the landmark judgement of Laxman Das v State of Maharashtra[13]. The court ruled that the statement made by the victim apprehending death must be made in a conscious state. The declarant should be competent to testify to the statement, and the court needs to assess the circumstances under which it was recorded to determine its reliability.[14] A dying declaration needs to be treated as any other evidence, demanding judicial scrutiny. The purpose of the court, in the end, is to establish the truthfulness of the statement.[15]

LAW DETERMINANTS

1. Does A Dying Declaration Possess the Requisite Evidentiary Value to be Deemed Sufficient as An Exclusive Proof of Conviction?

2. Is the 'Rule of First Opportunity' always Applicable, or is there Any Reasonable Suspicion to underestimate the Evidentiary Value of the Statement Made?

RESEARCH OBJECTIVES

[10] *State v Moody* [1798] NC (2 Hayw.) 350
[11] *Mattox v U S* [1895] 156 US 237
[12] *Bitthal Prasad v State of Rajasthan* (1992) 1 Raj LR 232
[13] *Laxman Das v State of Maharashtra* (2002) 6 SCC 710
[14] *Dilip Kumar Ray v State* (1988) 3 Crimes 530
[15] Vishwendra Prashant & Srishti Sinha, 'A Detailed Study on Dying Declaration under Law of Evidence' (2021) 2(1) JCLJ 347 <https://www.juscorpus.com/wp-content/uploads/2021/10/64.-Vishwendra-Prashant.pdf> accessed 05 March 2025

1. The author aims to delve into the historical and philosophical basis for the admissibility of dying declarations, and explore their jurisprudential evolution as an exception to the hearsay principle, which necessitates cross examination and corroborative evidence.

2. The author also aims to examine the rules and tests employed by courts in various legal precedents, to highlight the current standards of admissibility of dying declaration as a stand-alone piece of evidence.

3. Additionally, a *comparative analysis* with the common law system in the United Kingdom is necessitated, in order to highlight the approach of different legal systems while recording and admitting dying declarations.

4. Providing *suggestions and recommendations* based on the findings of the 48th and 69th Law Commission Reports, and comprehending whether these insights truly address the letter of the text under section 26(a) of the BSA 2023 (formerly section 32 of the Indian Evidence Act 1872).

CRITICAL ANALYSIS

Does A Dying Declaration possess the Requisite Evidentiary Value to be Deemed Sufficient as an Exclusive Proof of Conviction?

The 48th Law Commission Report of Karnataka[16] propounds that a dying declaration, from its very appellation, suggests an utterance which holds paramount importance, something which cannot be ignored in the ordinary course of dispensing justice. It has been consistently laid down by judicial pronouncements that a dying declaration, if found reliable and voluntary, can be the sole basis for conviction independent of corroboration. It was finally crystallised in Khushal Rao v State of Bombay[17] that a dying declaration need not be corroborated to substantiate a conviction by the Supreme Court. This was again reaffirmed in Harbans Singh v State of

[16] Law Commission of Karnataka, *THE NEED TO RECORD DYING DECLARATIONS IN THE PRESENCE OF JUDICIAL OFFICERS UNDER SECTION 32 OF THE INDIAN EVIDENCE ACT, 1972 (Amendment to Section 32 of the Indian Evidence Act, 1872)', 1972* (Law Com No 48, 2018)
[17] *Khushal Rao v State of Bombay* AIR 1958 SC 22

Punjab[18], making it known that it is neither mandated by law nor of prudential wisdom to necessitate corroboration by other evidence to secure conviction.

It was pointed out in K.R. Reddy v Public Prosecutor[19] that there was an intrinsic reliability in a dying declaration. Thus, importance is attached to ascertain, first, that the declarant was of a sound state of mind and secondly, free from any extraneous influence. The brevity of the dying declaration, as in Barati v State of U. P[20]., lends credibility if the statement is consistent and the statement is made in circumstances free from tutoring or prompting.

In State of U.P. v Ram Sagar Yadav[21], the Supreme Court held that the first judicial effort should be directed to test the veracity of dying declaration. Corroboration is necessary only when the circumstances under which declaration has been made are unreliable or uncertain. This angle of vision in such decisions ensures not only the sanctity of the declarant's last words but also adherence to principles of justice and fairness.

Is The 'Rule of First Opportunity' Always Applicable or Is There Any Reasonable Suspicion to Underestimate the Evidentiary Value of the Statement Made?'

The Rule of First Opportunity is one of the cardinal principles relating to the adjudication of dying declarations. It lays down that the first person who has the capability to record or witness the declaration must do so with alacrity and accuracy, unafflicted by any subsequent changes or influences.[22] Violation of this rule takes away the declaration from the shining apparel of authenticity and may even deprive it of its admissibility and probative value.

The Supreme Court of India reiterated in the case of Paniben v State of Gujarat[23] that dying declarations must be recorded without any loss of time so as not to affect their reliability and

[18] *Harbans Singh v State of Punjab* AIR 1962 SC 439
[19] *K.R. Reddy v Public Prosecutor* AIR 1976 SC 1994
[20] *Barati v State of Uttar Pradesh* AIR 1974 SC 859
[21] *State of UP v Ram Sagar Yadav* 1985 AIR 416
[22] Sheikh Abbas Bin Mohd, 'Nemo Moriturus Praesumntur Mentire: Dying Declaration under the Indian Evidence Act: An Analysis' (2021) 4(4) IJLMH <https://doij.org/10.10000/IJLMH.111736> accessed 05 March 2025
[23] *Paniben v State of Gujarat (*1992) SC (2) 197

authenticity. To preserve the integrity of a dying declaration, strict compliance with the Rule of First Opportunity is necessary, so that no tampering or manipulation should take place.

Equally important is the time of filing the FIR before taking a dying declaration. Courts normally expect that the FIR ought to be filed immediately after the commission of the offense. Delays may lead to serious questions pertaining to the authenticity of the FIR and the reliability of the dying declaration made thereafter. However, what period is considered prompt will again depend on the facts of a particular case.

A long period between the commission of the offense and the filing of the FIR is always considered to undermine the consideration that a dying declaration is given. Courts carefully examine the circumstances of delay to determine if it could have affected the declarant's state of mind or the veracity of their statement[24]. The prosecution must provide a valid explanation for any such delay, relating to the declarant's medical condition or any other logistic constraint, to assuage any doubts about the reliability attached to the declaration[25].

Though delayed, it may still be admissible provided it is found reliable and consistent with other pieces of evidence. The Supreme Court in State of Maharashtra v Suresh held that, though failure to file an FIR without loss of time may not itself render the dying declaration ineligible, it can certainly affect its weight and credibility. A prompt FIR strengthens the prosecution's case as it provides a contemporaneous record of events, while a delayed FIR raises a doubt about the reliability of the evidence.

The intrinsic reliability of a dying declaration has been emphasised upon time and again in criminal jurisprudence, as can be seen from K.R. Reddy v Public Prosecutor, to the effect that the declarant must be in a sound state of mind and free from any extraneous influence. Succinctness in a dying declaration gives credibility to it, after ensuring that there is consistency in the statement, and the circumstances are free from tutoring or prompting.

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[24] Vaidehi Gupta, 'Truth Sits upon the Lips of Dying Men: An Overview & Efficacy of the Dying Declaration under the Indian Evidence Act, 1872' (2021) 24 Supremo Amicus <https://supremoamicus.org/wp-content/uploads/2021/05/Vaidehi-Gupta.pdf> accessed 05 March 2025

[25] *Bakshish Singh v State of Punjab* AIR 1957 SC 904

It was explained by the Supreme Court in State of U.P. v Ram Sagar Yadav,[26] that a judicial effort should always be made initially to test the veracity of the dying declaration. Corroboration is required only when the circumstances under which the declaration came are hazy or doubtful.

In the Nirbhaya judgment[27], the Supreme Court relied on three different dying declarations. The first was recorded by a doctor post-incident on 16 December 2012. The second statement was given to a Sub-Divisional Magistrate on 21 December 2012. Thirdly, regarding the crime, there is the declaration made on 25 December 2012, which was also recorded through gestures by a Metropolitan Magistrate. The convicts challenged these declarations on various grounds, such as contradictions and flaws in the procedure. However, the bench headed by Chief Justice Deepak Mishra confirmed that the declarations were truthful, voluntary, and consistent. Where multiple dying declarations persist, each statement is to be considered independent of the other.[28] These judicial precedents, one way or another, bring out the fact that a dying declaration scrupulously examined for its credibility and voluntariness carries great probative value in any branch of the law of evidence and can, without overstatement, independently support a conviction.

JUDICIAL PRONOUNCEMENTS

This section purports to provide the evolving scope of the methods which are appreciated by the court in recording a dying declaration. The BNA 2023, or formerly the IEA 1872, does not explicitly provide any manner of accommodating dying declarations. They may range from oral to written, verbal to nonverbal communications, and even in the form of gestures and signs. Through a succession of judicial precedents and the findings of the 69th Law Commission Report of 1977[29], the statements provided do not necessarily have to be coincidental to the factual matrix.

[26] *State of U.P. v Ram Sagar Yadav* AIR 1985 SC 416
[27] *Mukesh & Anr v State of NCT of Delhi & Ors* (2017) 6 SCC 1
[28] *Shudhakar v State of M P* AIR 2012 SC 3265
[29] Law Commission, *The Indian Evidence Act, 1872* (Law Com No 69, 1977)

The court acknowledges and recognises the fact that 'a dying man seldom dies'[30], and prior to the acceptance of the dying declaration by the court, courts have time and again refined judicial principles to tailor to the demands of contemporary jurisprudence. If the victim in furtherance of providing a dying declaration survives, then the statement will not be considered as a dying declaration, but could be admitted to contradict, corroborate or verify the credibility of the victim.

Gestures and Signs as a form of Expression: In the judgement of Queen Empress v Abdullah[31], the appellant was accused of murdering a woman by slashing her throat with a razor. She was thereafter promptly taken to the emergency room, where she contested in front of the police officer. Albeit being physically incapable of speaking at the police station, she communicated through signs and gestures (hand movements) as a form of expression. The victim's dying declaration was duly recorded.

Non-verbal Expressions' Inherent Danger: In Manjunath v State of Karnataka[32], the court highlighted the danger of non-verbal dying declarations being tainted by suggestion, urging or infirmity. The court stressed the need to scrutinise individuals nearby while recording these statements and see if there persists any coercion or undue influence persists. The judgment reinforced the principles established in case law, such as Irfan@Naka v State of U. P[33]., again stressing: it is important to ensure that those who record a dying declaration are both identifiable and disinterested parties.

Oral Statements: In the case of Amar Singh v State of Rajasthan[34], the court took into consideration oral statements before death by the victim. The court based its judgment upon Pakala Swami v Emperor[35] and held that such statements concerning the transactions resulting in a person's death could be admitted provided that their effect was proximate. This judgment,

[30] Raashi Agarwal, 'Dying Declaration and Dowry Death' (2021) 3(2) Indian Journal of Law and Legal Research <https://www.ijllr.com/post/dying-declaration-and-dowry-death> accessed 05 March 2025
[31] *Queen Empress v Abdullah* 1885 ILR 7ALL 3
[32] *Manjunath v State of Karnataka* (2023) LiveLaw (SC) 96
[33] *Irfan@Naka v State of U P* (2009) 10 SCC 401
[34] *Amar Singh v State of Rajasthan* (2010) 9 SCC 64
[35] *Pakala Swami v Emperor* (1939) 41 BOMLR 428

in effect, reiterated the fact that both oral and written declarations would be valid dying declarations if made in a lucid state of mind and without coercion.

The Necessity of the Examination of Witnesses Highlighted: In Koli Chunilal Savji v State of Gujarat[36], the Supreme Court had observed that dying declarations are to be carefully scrutinised, especially when affirmed by relatives of the deceased. The court pointed out that corroborative evidence and independent witnesses are necessary for validation of the declaration.

Indefinite Dying Declarations are still Admissible in the Court of Law: The incomplete dying declarations were dealt with by the judgment of the Supreme Court in Laxman v State of Maharashtra. The court stated that even partial statements could still be admissible if the information given therein is relevant and corroborates other evidence. From this case, it can be understood that the clarity or lucidity of mind at the time of making the statement is a paramount factor for its admissibility.[37]

COMPARATIVE STUDY

The English Law: Under English law, dying declarations can only be used in criminal cases when the cause of death is in question. Under Indian law, dying declarations are admissible in evidence in both civil and criminal cases, and the trial may not be related to the incident in which the death was caused. The admissibility under English law relating to dying declarations is confined only to cases of homicide, which means thereby murders and manslaughters. Indian law, however, expands this ambit to include cases of suicide and hence is broader in its application. The most important difference is in the anticipation of death. According to English law, to be admissible, the declaration must have been made with the expectation of immediate death. Any statement that is not made with the expectation of death to come is inadmissible. The Indian law does not specify such a condition.

[36] *Koli Chunilal Savji v State of Gujarat* (1999) 9 SCC 562
[37] Prashant (n 15)

While under English law, there must be a completed statement of the dead person before his death, under Indian law, even if a final formal question had remained unanswered by the deceased, but the whole of the statement depicted all the circumstances,[38], such a declaration can be arrived at by a court. This shows a more flexible and accommodating approach in the Indian legal system towards dying declarations.

American Law: The admissibility of dying declarations, however, rests not solely on reliance upon the presumed honesty of a person about to die, but also upon the principle of necessity. Quite frequently, the victim alone will be the sole witness to the crime that has been committed, and to exclude the dying declaration because it constitutes hearsay would impede the course of justice.

Like in English law, the American jurisprudence lays down a very rigid test of certainty of death, expressed variously as no hope of recovery or as a settled expectation of death. The test requires that the expectation of death be unequivocal and free from any worldly motives or doubts.

CONCLUSION AND SUGGESTIONS

The attempt at providing a workable jurisprudence in the Indian law concerning dying declarations also tries to balance the need for truth and justice with safeguards against potential misuse. This also satisfies the requirement for including dying declarations under Section 26(a) of the BNA 2023, and also takes into consideration the special position of the victim as usually the solitary witness to the occurrence.

The law is not, however, free from difficulties and some loopholes. One such major issue is that the wide sweep of the phrase any circumstances of the transaction[39] can, in certain instances, extend to bring in even statements that are otherwise only indirectly related to the actual cause of death. The expansive nature of the view, though it spreads to all material facts, may just let in statements that are not necessarily relevant to the incident of fatality itself, hence complicating the judicial process.

[38] *Kishan Lal v State of Rajasthan* AIR 1999 SC 3062
[39] *Patel Hiralal Joitaram v State of Gujarat* AIR 2001 SC 2944

Another significant problem with the law is that under the BNA 2023, the term statement is not well defined. The ambiguity of the definition invites many different interpretations and thereby different applications of the doctrine in practice. Also, the condition precedent that the declarant should be of sound mind is very hard to determine in practice, particularly when complications such as severe injuries, where the victim is left essentially with huge burns on his body.[40] Although the law does not provide specific guideline provisions on how to evaluate mental faculties for severely injured victims, this demonstrates that such judgment is left at the discretion of a court of law.

The following suggestions can also be considered to address these loopholes:

1. Defining Statement: The Act should include a clear and definite definition of the word statement under the regime of dying declaration. This will help in maintaining uniformity and avoiding ambiguity in legal proceedings.

2. Guidelines of Mental Fitness: This should be brought out by, after elicitation of the statement, conducting a medical assessment by professionals to depict what the mental condition of the declarant was at the time of making the statement.

3. Training for First Responders: Specialized professional training should be put in place for law enforcers, medical professionals, and magistrates in the art of recording dying declarations. The training should stress reduction of any influence and ensuring clarity while maintaining integrity in the statement of the declarant.

4. Technological Integration: Here, by recording dying declarations through audio-visual technology, it would get a more accurate and reliable recording of the statement, including the demeanor and state of the declarant; it would, therefore, assist the court in evaluating the voluntariness and veracity of the declaration.

[40] *Govindappa v State of Karnataka* (2010) 6 SCC 533